

Armed Forces Special Powers Act A study in National Security tyranny

South Asian Human Rights Documentation
Centre

November 1995
Originally published

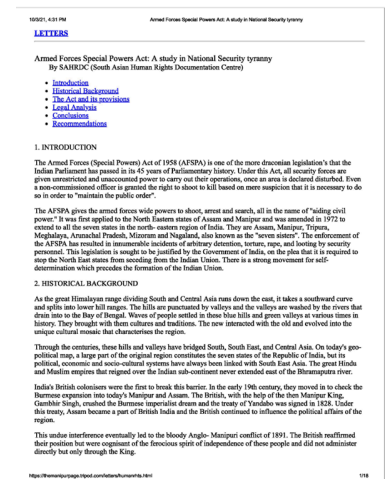
SUMMARY

November 23, 2023

This report by the The South Asian Human Rights Documentation Centre (a network of individuals that seeks to investigate, document, and disseminate information about human rights) focuses on the Armed Forces Special Powers Act (AFSPA), including its application in the "North East" of India as well as Indian-Administered Kashmir. Under AFSPA, all Indian forces have unrestricted and unaccounted power to once an area is declared disturbed. AFSPA gives armed forces wide powers to shoot, arrest and search, all in the name of "aiding civil power." The enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. This legislation is sought to be justified by the Government of India as required to stop secession.

Topics: historical background, the act and its provisions, legal analysis, Indian law, the Army Act, state of emergency, international law, international customary law, comparative law standards

Terms: The Armed Forces (Special Powers) Act (AFSPA), Indian Criminal Procedure Code (CrPC), constitutional



rights, international human rights law, human rights violations, Indian state propaganda, legalized impunity, failure of international accountability

ARTICLE PREVIEW

...Secondly, when the armed forces are tried in army courts, the public is not informed of the proceedings and the court martial judgments are not published. In a meeting with the government National Human Rights Commission (NHRC), a representative of SAHRDC was able to discuss cases where BSF and armed forces in Jammu and Kashmir were punished for abuses. Yet, the results of these trials were not published and the NHRC representative stated that it would endanger the lives of the soldiers.

Article 26 of the ICCPR, like article 14 of the Indian Constitution guarantees equal protection for all persons before the law. The AFSPA violates this right because the inhabitants of the North East do not have equal protection before the law. They live under a virtual but undeclared state of emergency and are given no remedy for the injustices they suffer at the hands of the military. Inhabitants of the rest of India, with the exception of Punjab and Kashmir are not subject to this law.

The Armed Forces Special Powers Act contravenes both Indian and International law standards. This was exemplified when India presented its second periodic report to the United Nations Human Rights Committee in 1991. Members of the UNHRC asked numerous questions about the validity of the AFSPA, questioning how the AFSPA could be deemed constitutional under Indian law and how it could be justified in light of Article 4 of the ICCPR. The Attorney General of India relied on the sole argument that the AFSPA is a necessary measure to prevent the secession of the North Eastern states. He said that a response to this agitation for secession in the North East had to be done on a "war footing." He argued that the Indian Constitution, in Article 355, made it the duty of the Central Government to protect the states from internal disturbance, and that there is no duty under international law to allow secession.

Article 21 of the Indian Constitution guarantees the right to life to all people. It reads, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Judicial interpretation that "procedure established by law means a "fair, just and reasonable law" has been part of Indian jurisprudence since the 1978 case of Maneka Gandhi. This decision overrules the 1950 Gopalan

case which had found that any law enacted by Parliament met the requirement of "procedure established by law".



Kashmir Law & Justice Project is an advocacy organization led by Kashmiri diaspora lawyers that seeks to bring attention to, and to redress, historic and ongoing rights violations in Indian-Administered Jammu and Kashmir.



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